

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF NORTH CAROLINA
WINSTON-SALEM DIVISION

ENTERED

DEC 21 '00

U.S. Bankruptcy Court
Greensboro, NC

CPH

IN RE:)
)
Summit Hosiery Mills, Inc.,) Case No. 00-51047C-7W
)
Debtor.)
)

ORDER

This case came before the court on December 14, 2000, for hearing upon a Motion by First Union National Bank for an Order Directing the Trustee to Distribute Proceeds of Sale to First Union. Marie Blue Barry appeared on behalf of First Union National Bank ("First Union") and C. Edwin Allman, III appeared on behalf of the Trustee.

FACTS

The operative facts in this case are not in dispute. In August of 1997, the Debtor obtained a loan from First Union and executed a security agreement granting a security interest in four computerized hosiery knitting machines to secure the loan. At that time, Debtor's corporate name was Jara Atlantic Mills, Inc., and all of the loan documents were executed in that name. First Union failed to perfect its security interest in August of 1997 in that no financing statement was filed in Cabarrus County, where the Debtor's place of business was located. However, First Union did file a financing statement with the Secretary of State in which Jara Atlantic Mills, Inc. is named as the Debtor and which describes the collateral as the four knitting machines which were

sold by the Trustee.

In October of 1999, First Union filed a financing statement with the Register of Deeds of Cabarrus County. This filing apparently was made in connection with a second loan obtained by the Debtor in October of 1999. By that time, the Debtor's name had been changed to its current name, Summit Hosiery Mills, Inc., and that is the name used in the financing statement that was filed in October of 1999. The collateral described in the 1999 financing was the same four knitting machines described in the 1997 financing statement. First Union did not make a filing with the Secretary of State in October of 1999.

The four knitting machines described in the First Union financing statements were still owned by the Debtor when this case was filed. The net amount realized from the sale of the four knitting machines was \$1,714.47. When this case was filed the amount owed First Union under the promissory note secured by the 1997 security agreement was in excess of \$1,714.47.

ANALYSIS

It is undisputed that in both August of 1997 and October of 1999, First Union did not comply with the dual filing requirement contained in G.S. § 25-9-401(1)(c), since only a single financing statement was filed on each occasion. The issue which is presented is whether First Union may combine the filings which were made in August of 1997 and October of 1999 and thereby establish the dual

filing required for a perfected security interest with respect to the four computerized hosiery knitting machines referred to in both of the financing statements filed by First Union. If so, then First Union's motion should be granted and the Trustee should be required to pay to First Union the net proceeds realized from the knitting machines described in the two financing statements that were sold by the Trustee.

No issue has been raised as to the sufficiency of the financing statements as originally filed. Both financing statements satisfied the requirements of G.S. § 25-9-402 in that they included the names of the debtor and the secured party, were signed by the debtor, gave the address of the secured party, gave a mailing address for the debtor and contained an adequate description of the knitting machines which comprise the collateral. Issues have been raised, however, because of the long delay between the filing of the two financing statements and because the Debtor's name was changed after the first financing statement was filed.

Typically, filings with the Secretary State and the Register of Deeds occur with very little lapse of time between the two filings. This obviously did not occur in the present case since the filing with the Secretary of State occurred in August of 1997, while the filing in Cabarrus County was in October of 1999. While unusual, this lapse of time between the two filings does not mean that the required dual filing was not accomplished once the filing

in October occurred. The place of filing financing statements and the requirement of dual filing in North Carolina derives from G.S. § 25-9-401. Where, as in the present case, the collateral consists of equipment and the debtor is a resident with only one place of business in North Carolina, this statute requires that financing statements be filed "in the office of the Secretary of State and in addition, if the debtor has a place of business in only one county of this State, also in the register of deeds of such county. . . ." G.S. § 25-9-401. There is no requirement regarding the order in which the financing statements must be filed, nor is there any temporal requirement that the two filings occur within a specified period of time. Hence, once First Union filed the financing statement in Cabarrus County in October of 1999, the dual filing requirement under G.S. § 25-9-401 was satisfied because, at that point, First Union had financing statements on record with both the Secretary of State and the Register of Deeds of Cabarrus County, where the Debtor's only place of business was located.

The fact that the 1999 financing statement may have been the direct result of a second loan and second security agreement is of no consequence since there is no requirement under G.S. § 25-9-402 that a financing statement identify a particular security agreement between the debtor and the secured party. Such specificity simply is not necessary in order for the financing statement to serve its intended purpose of giving notice that the secured party may have

a security interest in the described collateral and providing the information required in order for other creditors to make further inquiry.

The remaining issue is whether the 1997 financing statement was rendered ineffective as a result of the Debtor changing its name from Jara Atlantic Mills, Inc. to Summit Hosiery Mills, Inc. after the 1997 financing statement was filed. The answer to this issue is found in G.S. § 25-9-402(7) which, in pertinent part, provides:

Where the debtor so changes his name or in the case of an organization, its name, identity or corporate structure that a filed financing statement becomes seriously misleading, the filing is not effective to perfect a security interest in collateral acquired by the debtor more than four months after the change, unless a new appropriate financing statement is filed before the expiration of that time. (Emphasis supplied).

Under this provision, if a filed financing statement becomes seriously misleading as a result of a name change, the financing statement becomes ineffective as to collateral acquired more than four months after the name change unless a new financing statement is filed within four months using the debtor's new name. The cases reflect that a significant difference between the old and the new name will render a financing statement "seriously misleading". However, even where such a name change occurs, the financing statement remains effective as to a security interest in collateral owned at the time of the name change and collateral acquired within

four months after the change. Western Auto Supply Co. v. McKenzie, 227 Ga. App. 477, 489 S.E.2d 537 (1997); Fleet Factors Corp. v. Bandolene Industries Corp., 86 N.Y.2d 519, 634 N.Y.S.2d 425 (1995); New Oil, Inc. v. First Interstate Bank, 895 P.2d 871 (Wyo. 1995).

It is undisputed that the four knitting machines sold by the Trustee are the same knitting machines referred to in the 1997 financing statement and hence were not acquired more than four months after the Debtor changed its name. Therefore, the 1997 financing statement remained effective as to the security interest granted under the 1997 financing agreement notwithstanding the change in Debtor's name. Hence, First Union's security interest in the four knitting machines pursuant to the 1997 security agreement was perfected when the 1999 financing statement was filed in Cabarrus County. Since the unpaid balance of the indebtedness secured by such security interest exceeds the net proceeds realized from the sale of the four knitting machines, First Union's motion should be granted and the Trustee required to pay the entire net proceeds of \$1,714.47 to First Union.

IT IS SO ORDERED.

This 21st day of December, 2000.

WILLIAM L. STOCKS

WILLIAM L. STOCKS
United States Bankruptcy Judge